

AMENDED IN ASSEMBLY MARCH 6, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 79

Introduced by Assembly Member Galgiani

December 4, 2006

An act to amend Section 3041.5 of the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

AB 79, as amended, Galgiani. Parole.

Existing law provides that the Board of Parole Hearings shall hear each case annually following any meeting at which parole is denied, as specified. Existing law also provides that the board may schedule the next hearing, in the case of a prisoner who has been convicted of murder, up to 5 years after any hearing at which parole is denied, if the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years, and states the basis for the finding in writing except that the board may schedule the next hearing no later than 2 years after any hearing at which parole is denied if the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following year and states the bases for the finding and, in the case of a prisoner who has been convicted of murder, up to 5 years after any hearing at which parole is denied. Existing law also provides that if the board defers a hearing 5 years, the prisoner's central file shall be reviewed by a deputy commissioner, as specified.

This bill would *authorize the board to extend the denial for a prisoner subject to a 2-year parole review up to 2 additional years, for a total of 4 years, if the board finds that the record, based on a review of relevant evidence, supports the additional time. The bill would also*

provide that if the prisoner has been convicted of murder, the board shall hear the case ~~5~~ 10 years after any hearing at which parole is denied.

Existing law authorizes a prisoner, at least 10 days before a parole hearing, to review his or her file and, upon request, to receive a stenographic record of all proceedings.

This bill would authorize the victim or victim's representative to review the prisoner's file and, upon request, to also receive the stenographic record of those proceedings.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3041.5 of the Penal Code is amended to
2 read:

3 3041.5. (a) At all hearings for the purpose of reviewing a
4 prisoner's parole suitability, or the setting, postponing, or
5 rescinding of parole dates, the following shall apply:

6 (1) At least 10 days prior to any hearing by the Board of ~~Prison~~
7 ~~Terms Parole Hearings~~, the prisoner *and the victim or victim's*
8 *representative* shall be permitted to review ~~his or her~~ *the prisoner's*
9 file which will be examined by the board and shall have the
10 opportunity to enter a written response to any material contained
11 in the file.

12 (2) The prisoner shall be permitted to be present, to ask and
13 answer questions, and to speak on his or her own behalf.

14 (3) Unless legal counsel is required by some other provision of
15 law, a person designated by the Department of Corrections *and*
16 *Rehabilitation* shall be present to ~~insure~~ *ensure* that all facts
17 relevant to the decision be presented, including, if necessary,
18 contradictory assertions as to matters of fact that have not been
19 resolved by departmental or other procedures.

20 (4) The prisoner *and the victim or victim's representative* shall
21 be permitted to request and receive a stenographic record of all
22 proceedings.

23 (5) If the hearing is for the purpose of postponing or rescinding
24 of parole dates, the prisoner shall have rights set forth in paragraphs
25 (3) and (4) of subdivision (c) of Section 2932.

26 (b) (1) Within 10 days following any meeting where a parole
27 date has been set, the board shall send the prisoner a written

1 statement setting forth his or her parole date, the conditions he or
2 she must meet in order to be released on the date set, and the
3 consequences of failure to meet those conditions.

4 (2) Within 20 days following any meeting where a parole date
5 has not been set for the reasons stated in subdivision (b) of Section
6 3041, the board shall send the prisoner a written statement setting
7 forth the reason or reasons for refusal to set a parole date, and
8 suggest activities in which he or she might participate that will
9 benefit him or her while he or she is incarcerated.

10 ~~The board shall hear each case annually thereafter, except the~~
11 ~~board may schedule the next hearing no later than two the~~
12 ~~following:~~

13 (A) ~~Two years after any hearing at which parole is denied if the~~
14 ~~board finds that it is not reasonable to expect that parole would be~~
15 ~~granted at a hearing during the following year next two years and~~
16 ~~states the bases for the finding. In the case of a prisoner convicted~~
17 ~~of murder, the board shall hear the case five years after any hearing~~
18 ~~at which parole is denied. The board may extend the denial up to~~
19 ~~two additional years, for a total of four years, if the board finds~~
20 ~~that the record supports the additional time. If the board's review~~
21 ~~of all relevant information makes it not reasonable to expect that~~
22 ~~the prisoner would be found suitable for up to four years and that~~
23 ~~the additional time is required for the prisoner to address the~~
24 ~~findings and recommendations of the board, the additional time~~
25 ~~may be imposed. The circumstances may include, but are not~~
26 ~~limited to, the gravity of the crime, prior social or criminal history,~~
27 ~~in-custody behavior, negative chronologies, convictions for~~
28 ~~in-custody behavior, an unwillingness to participate in and~~
29 ~~complete board recommended self-help, therapy, educational or~~
30 ~~vocational upgrading, or other recommendations that are available~~
31 ~~to the prisoner, issues raised in psychological or psychiatric~~
32 ~~reports considered by the board, the prisoner's unwillingness to~~
33 ~~complete board recommendations that it is reasonable to expect~~
34 ~~are available to the prisoner, demonstrated lack of insight,~~
35 ~~empathy, remorse, or attempts to make amends to victims and~~
36 ~~society, the impact of the prisoner's criminal behavior on victims~~
37 ~~and society, and any other issues determined relevant by the board~~
38 ~~upon a review of all relevant information.~~

39 (B) ~~Ten years in the case of a prisoner convicted of murder,~~
40 ~~following ____ hearings at which parole is denied and the board~~

1 *finds that it is not reasonable to expect that parole would be*
2 *granted at a hearing during the following years and has stated the*
3 *bases for the finding in writing.*

4 (3) Within 10 days of any board action resulting in the
5 postponement of a previously set parole date, the board shall send
6 the prisoner a written statement setting forth a new date and the
7 reason or reasons for that action and shall offer the prisoner an
8 opportunity for review of that action.

9 (4) Within 10 days of any board action resulting in the
10 rescinding of a previously set parole date, the board shall send the
11 prisoner a written statement setting forth the reason or reasons for
12 that action, and shall schedule the prisoner's next hearing within
13 12 months and in accordance with paragraph (2).